



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 100 OF 2019

GEORGE KIMANI KANG'ETHE.....PLAINTIFF/APPLICANT

VERSUS

LUCY GATHONI WAMBUGU.....1ST DEFENDANT/RESPONDENT

JOSEPH LELO.....2ND DEFENDANT/RESPONDENT

LAND REGISTRAR KIAMBU COUNTY.....3RD DEFENDANT/RESPONDENT

ATTORNEY GENERAL.....4TH DEFENDANT/RESPONDENT

RULING

The Plaintiff/Applicant filed this suit on **30th May, 2019**, and sought for various prayers against the Defendants. Among the prayers sought is a declaration that Land title No. **Kiambu/Municipality/Block III/45**, was illegally and fraudulently transferred to the 1st Defendant. He averred that at all material times, he was and is still the registered owner of all that the piece of land known as **Kiambu/Municipality/Block III/45**.

However the 1st Defendant/Respondent entered into a sale agreement with the 2nd Defendant/Respondent and executed a transfer of the property in favour of the 2nd Defendant/ Respondent and the said transfer is pending registration.

Simultaneously, the Plaintiff/ Applicant sought for Injunction to restrain the Defendants/Respondents whether by themselves or through any persons whatsoever from interfering and/or dealing with the suit property pending the hearing and determination of the suit.

The Notice of Motion application is opposed and the 1st Defendant/ Respondent averred that she is the rightful and sole proprietor of all that property known as **Kiambu/Municipality/Block III/45**, since **2010**, and admitted having entered into a sale agreement with the Plaintiff on **15th December, 2009**, and a title deed was issued in her name on **23rd February, 2010**. However, she entered into another sale agreement with the 2nd Defendant/ Respondent with full colour of right in law and the sale was completed and did allow the 2nd Defendant/ Respondent to enter into this property to begin construction. Then the Plaintiff/Applicant appeared and forcefully evicted the 2nd Defendant/Respondent and the matter was reported to the DCIO.

The 2nd Defendant/ Respondent also filed a Replying Affidavit and admitted to having entered into a sale agreement with the 1st Defendant/Respondent on **27th February, 2019** and he paid the full purchase price of **Kshs, 25,000,000/=** and took possession of the same. He urged the Court to dismiss the instant application.

The court has considered the pleadings and the annexures thereto. There is no doubt that the 1st Defendant/Respondent did sell the suit property to the 2nd Defendant/ Respondent herein. There is also a sale agreement between the Plaintiff/Applicant and the 1st Defendant/ Respondent dated **15th December, 2009**. The 1st Defendant/Respondent allegedly obtained a certificate of lease on **23rd February, 2010**. The 2nd Defendant has alleged that he is an innocent purchaser. The issue raised herein can only be determined in a full trial during the hearing of the main suit. However the suit property needs to be preserved and the same can only be preserved by maintaining of **status quo** and the **status quo** herein is what existed before the suit herein was filed. See the case of **Agnes Adhiambo Ojwang...Vs...Wycliffe Odhiambo Ojjo, Kisumu HCCC No.205 o 2000**, where the Court held that:-

“the purpose of injunction is to preserve the status quo and the status quo to be preserved is the one that existed before the

wrongful act?.

As provided by **Rule 32 of the ELC practice Directions**, the Court directs that status quo herein to be maintained and the status quo is that there should be no dealing or interfering of the suit property by any of the parties herein that is the Plaintiff/ Applicant and the Defendants/ Respondents and **any dealing** means **no constructions, no subdivision no charging, no alienation, occupation, leasing or disposal off** until the suit is heard and determined.

Further, the Defendants/Respondents herein are directed to file their Defences within a period of fourteen (**14**) days from the date hereof and thereafter parties to comply with Order 11 within a period of thirty (**30**) days after the Defendants/ Respondents have filed their Defences and Pre-trial Directions on **10th September 2019** before the Deputy Registrar of this Court so that the suit can be set down for hearing expeditiously and the disputed issues resolved at once.

It is so ordered.

Dated, Signed and Delivered at Thika this 15th day of July 2019.

L. GACHERU

15/7/2019

JUDGE

In the presence of

Mr. Macharia for the Plaintiff/Applicant

Mr. Ndegwa for 1st Defendant/ Respondent

Ms. Mwangi holding brief for Ms. Luci for 2nd Defendant/ Respondent

Ms. Ndundu for 3rd & 4th Defendants/Respondents

Court: Ruling read in open Court in the presence of the above advocates.

L. GACHERU

15/7/2019

JUDGE